



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 31, 1994

Ms. Detra Hill
Assistant City Attorney
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR94-534

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 27739.

The City of Dallas (the "city") has received a request for a "copy of [the] report requested by Police Chief Ben Click and prepared by the Office of Professional Standards regarding hiring practices in the Dallas Police Department." The city asserts that certain portions of the report constitute "test items" protected from disclosure under section 552.122(b) of the act.

Section 552.122(b) of the act excepts from required public disclosure "[a] test item developed by a licensing agency or governmental body." This office recently considered the meaning of the term "test item" in Open Records Decision No. 626 (1994) (copy enclosed):

[T]he term "test item" in section 552.122 generally includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. An evaluation does not necessarily constitute a test, however, simply because it is labelled as a test, because it is comprised of questions and answers, or because it involves some sort of scoring system. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Id. at 6. In Open Records Decision No. 626, we concluded that Department of Public Safety forms used to evaluate applicants for promotions did not contain "test items" because they did not evaluate applicants' knowledge in a particular area. *Id.* at 8.

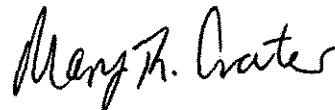
The city contends that portions of the requested report that set forth factors which would disqualify an applicant to the police department are protected under section 552.122(b) for the following reasons:

[I]f the disqualifiers were to become public information, the standard set by our Department for its employees would be seriously jeopardized, since the public would know how to answer application process inquiries in a manner that would not cause disqualification, regardless of whether such responses were truthful. The portions to which we object provide the "correct answers" to many questions posed during the application process and, in essence, provide the means with which to "beat" these important disqualifiers, rendering the disqualifiers useless.

We have reviewed the portions of the report regarding disqualifying factors that the city seeks to withhold. These factors generally relate to applicants' past and present conduct, not their knowledge or ability in a particular subject matter. Therefore, we conclude that the portions of the report are not test items. Accordingly, the portions of the report are not excepted from required public disclosure under section 552.122(b) of the act, and the report must be released in full.²

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/MAR/rho

Ref.: ID# 27739

Enclosures: Open Records Decision No. 626
Submitted documents

²The city has not raised any other exceptions to required public disclosure.

cc: Ms. Nora López
Reporter
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)